

April 15, 2016

**VIA ELECTRONIC MAIL AND HAND DELIVERY**

Todd Anthony Bianco, EFSB Coordinator  
RI Energy Facility Siting Board  
89 Jefferson Boulevard  
Warwick, RI 02888

***Re: Invenergy Thermal Development LLC's Application to Construct and Operate the  
Clear River Energy Center in Burrillville, Rhode Island  
Docket No.: SB-2015-16***

Dear Mr. Bianco:

On behalf of Invenergy Thermal Development LLC and the Clear River Energy Project ("Invenergy"), please find enclosed an original and ten (10) copies of Invenergy's Objection to Lyle and Erin Walker's Motion for Intervention.

Electronic copies of the responses have been provided to the service list.

If you have any questions, please do not hesitate to contact me at (401) 274-7200.

Very truly yours,



NICOLE M. VERDI  
[nverdi@apslaw.com](mailto:nverdi@apslaw.com)

Enclosures

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
ENERGY FACILITY SITING BOARD**

**In Re: INVENERGY THERMAL DEVELOPMENT )  
LLC’S APPLICATION TO CONSTRUCT THE ) Docket No. SB-2015-06  
CLEAR RIVER ENERGY CENTER IN )  
BURRILLVILLE, RHODE ISLAND )**

**OBJECTION OF INVENERGY THERMAL DEVELOPMENT LLC  
TO LYLE AND ERIN WALKER’S MOTION FOR INTERVENTION**

Now comes, Invenergy Thermal Development LLC (“Invenergy”) and hereby objects to Lyle and Erin Walker’s (“the Walkers”) Motion for Intervention. The Walkers’ Motion for Intervention should be denied because (1) they are not represented by a Rhode Island attorney, as required by the Rhode Island Energy Facility Siting Board Rules; (2) the Walkers do not have a statutory right to intervene; (3) the Walkers asserted interests as residents of Wallum Lake Road are adequately represented by existing parties; and (4) the Walkers have failed to demonstrate good cause as to why their late motion for intervention should be accepted. Accordingly, Invenergy respectfully requests that the Walkers’ Motion for Intervention be Denied.

**I. BACKGROUND**

Pursuant to the Energy Facilities Siting Act, Chapter 42-98 of the General Laws of Rhode Island, as amended (“Act”), and the Rules of Practice and Procedure (“Rules”) of the Rhode Island Energy Facilities Siting Board (“RI EFSB” or “Board”), Invenergy filed an application to seek the approval of the RI EFSB to site and construct the Clear River Energy Center, an approximately 850-1000 MW combined cycle electric generating facility on Wallum Lake Road in Burrillville, R.I. (“CREC” or “Project”).

In accordance with the Act and the Rules, the RI EFSB held a Preliminary Hearing on January 12, 2016 to consider the application and the required elements as set forth in the Act and

the Rules. On March 31, 2016, the RI EFSB held an open meeting and took public comment for four hours. There will be further opportunity for public comment on May 10, 2016 and May 23, 2016, in separate open forums before the Town of Burrillville. The Act (R.I. Gen. Laws 42-98-9) and the Rules (Rule 1.9) are quite specific with regard to the issues that RI EFSB will evaluate in this proceeding.

## **II. LEGAL STANDARD FOR INTERVENTION**

The legal standard for intervention as a Party is well established. Pursuant to Rule 1.10(b) “any person claiming a right to intervene or an interest of such a nature that intervention is necessary or appropriate may intervene in any proceeding” where such a “right or interest” may be: (1) a right conferred by statute; (2) an interest which may be directly affected and which is not adequately represented by existing parties and as to which petitioners may be bound by the Board’s action in the proceeding; (3) any other interest of such a nature that petitioner’s participation may be in the public interest. Rule 1.10(d)(3) provides that the Board may, for good cause, authorize the filing of a late notice of intervention or motion to intervene.

Intervention as full Parties should be limited to Parties that have either statutory rights to intervene, directly affected interests that will not be adequately represented by other Parties, or special public interests that compel intervention as a Party. *See, e.g., In Re: Application of R.I. Fast Ferry, Inc. for Water Carrier Authority*, Docket D-13-51, Order No. 21170 (9/24/2013), at pp 15-20. *See also Public Service Co. of New Hampshire v. Patch*, 136 F.3rd 197, 205 (1st Cir. 1998) (“It is settled beyond peradventure, however, that an undifferentiated, generalized interest in the outcome of an ongoing action is too porous a foundation on which to premise intervention as of right . . .”).

Finally, Rule 1.4(a) requires that “[a]ll parties to a proceeding shall be represented by an attorney, unless otherwise ordered by the Board for good cause shown” and that “[p]articipants, other than parties, may appear in any proceeding in person or by an attorney.”

### **III. DISCUSSION**

A Motion for Intervention was filed on behalf of the Walkers as individuals which was received via e-mail on April 11, 2016. The Walkers do not appear to be licensed attorneys nor represented by a licensed attorney in Rhode Island, contrary to the requirement in Rule 1.4(a).<sup>1</sup> These individuals are residents that reside on property they assert is in the vicinity of the CREC Project. There is no statutory right to intervene cited, and while these residents may have a property interest that may be affected by the Project, that interest is represented by other Parties to this proceeding, adequately protecting the Walkers’ property interest in the Project.

Several other parties to this proceeding will be representing the overall economic and environmental impacts (and benefits) associated with the CREC Project, including the issues of concern to the Walkers, namely the impact of the Project on the environment and economic concerns.

It is not in the public interest to allow each and every property owner or resident who lives within the vicinity of the Project to intervene as a full party to this proceeding without a licensed Rhode Island attorney, particularly where the responsible government agencies will be active participants to the proceeding.

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<sup>1</sup> The Board, similar to the R.I. Public Utilities Commission has no jurisdiction to grant a waiver from the requirement that a Rhode Island entity be represented by legal counsel licensed to practice law in Rhode Island, as only the Supreme Court can determine who may practice law and the representation of a client before administrative agencies does constitute the practice of law under the R.I. Supreme Court rules. *See In Re: Steven E. Ferry*, 774 A.2d 62 (R.I. 2001).

Finally, as the Board has explained, there will be ample opportunity for the Walkers and the other concerned members of the Town, including all property owners, to provide comments, views, oppositions and data, in the form of public comment, in writing or in public testimony, so that the Board may hear of the concerns and positions of these property owners with regard to the Project. The Board has already held one public meeting and has scheduled two more opportunities for specific public comments from residents of the Town.

#### **IV. CONCLUSION**

For the reasons set forth herein, Invenergy hereby requests that the RI EFSB deny the Walkers' late Motion for Intervention.

Respectfully submitted,

INVENERGY THERMAL DEVELOPMENT, LLC

By Its Attorneys:

/s/ Nicole M. Verdi  
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Dated: April 15, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on April 15, 2016, I delivered a true copy of the foregoing document via electronic mail to the parties on the attached service list.

/s/ Nicole M. Verdi